

DANNY H. POWERS
Claimant

THE BOEING COMPANY
Respondent

AETNA CASUALTY & SURETY
Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

ORDER

APPEARANCES

RECORD

STIPULATIONS

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Administrative Law Judge in her Award of July 19, 1994, accurately set forth the findings of fact and conclusions of law pertinent to this matter. The Appeals Board adopts in toto the findings and conclusions of the Administrative Law Judge.

The claimant alleges occupational disease while working for respondent. Claimant alleges his occupation required he become exposed to certain chemicals which have made claimant ultra-sensitive and caused him to develop symptoms of upper respiratory problems including rhinitis, chronic sinusitis, asthma and bronchitis.

Only two medical depositions were taken in this matter. Dr. Douglas R. Livingston, a pulmonary physician specialist and an Associate Fellow of the American College of Angiology, deals regularly with abnormalities and diseases of the blood vessels. Dr. Livingston, having the opportunity to examine and treat claimant over a substantial period of time opined claimant's lung function was normal subsequent to his exposure at Boeing. He went on to state that the upper respiratory problems developed by claimant while at Boeing were a temporary aggravation only and there is no indication within a reasonable degree of medical certainty that claimant's sensitivity was permanently aggravated as a result of his contact with the substances while employed with respondent.

Dr. Daniel C. Doornbos, a specialist with board certifications in internal medicine and pulmonary diseases and a critical care board equivalent, deals with lung difficulties and asthma patients on a regular basis. He had the opportunity to examine claimant on three different occasions between February 17, 1992 and April 15, 1992. He, like Dr. Livingston, was made aware of claimant's multiple allergy problems which preexisted his employment at Boeing. Claimant had earlier been diagnosed with bronchitis, sinusitis and preexisting asthma conditions from his childhood. While treating claimant, during a period when claimant was not working at Boeing, claimant developed illnesses similar to those experienced at Boeing even though his exposure to the chemicals at Boeing had been eliminated. Dr. Doornbos felt claimant had sustained no permanent damage as a result of his exposure to the chemicals in his work environment with respondent. He also found claimant's pulmonary function to be normal. He indicated claimant has asthma and chronic rhinitis and is also subject to chronic infections, irritations of the nasal passages and cough. So long as claimant is in Kansas, these symptoms will continue.

The Administrative Law Judge in finding claimant's condition to be temporary only and in denying claimant an award on a permanent basis felt that the permanency of claimant's condition did not result from the work-related injury, thus the employer would not be liable. The Appeals Board finds the evidence in the record fully supports a finding that claimant's condition suffered while in the employment of respondent constituted a temporary aggravation of claimant's condition and claimant is entitled to no additional award in this matter.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated July 19, 1994, shall be and is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James P. Johnston, Wichita, Kansas
Vaughn Burkholder, Wichita, Kansas
Scott Mann, Hutchinson, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director